



STANDARD TERMS AND CONDITIONS OF HIRE ("Terms")

The following Terms of On Sight Limited ("OSL") form the basis of the Contract between OSL and the Customer. Where there is any inconsistency between the provisions hereof and the Confirmation (defined below), the provisions of the Confirmation will apply.

1. Interpretation

1.1 In these Terms, unless the context otherwise requires, the following expressions have the following meanings:-

"Confirmation" the email/letter sent by OSL to the Customer confirming the details of the Order (including any amendments to the Confirmation agreed by both parties).

"Consumables" those items sold by OSL to the Customer from time to time including, but not limited to, video cassette tapes and batteries.

"Contract" each individual offer by OSL accepted by the Customer in accordance with Clause 2 incorporating these Terms.

"Customer" the person who, in the course of their business, has agreed to hire the Equipment from OSL.

"Delivery Date" the date set out in the Confirmation or such other date agreed in writing by the parties.

"Delivery Address" the address for delivery set out in the Confirmation or such other address agreed in writing by the parties.

"Equipment" the equipment supplied by way of hire by OSL as set out in the Confirmation together with such other equipment as may be agreed in writing by the parties.

"Hire Charge" the fee for the hire of the Equipment as set out in the Confirmation payable in accordance with Clause 4.

"Hire Period" the period of hire of the Equipment as set out in the Confirmation.

"Order" the order placed by the Customer (by telephone or otherwise) for the hire of the Equipment.

"OSL" On Sight Limited (company number 2410150) whose registered office is at 14-15 Berners Street, London W1T 3LJ.

"Price" the price of the Consumables as set out in the Confirmation payable in accordance with Clause 4.

1.2 The headings in these Terms are for ease of reference only and shall not affect the construction or interpretation of the Contract.

1.3 Words importing the singular include the plural and vice versa and words importing any gender include every gender.

1.4 Any reference to "person" shall include any partnership, firm, company, body corporate, corporation or organisation.

1.5 Any reference to "writing" or "in writing" includes emails and facsimiles.

2. Application of Terms

2.1 Subject to Clauses 2.5 and 14.3, these Terms shall apply to all Orders and Contracts to the exclusion of all other terms and conditions (including any terms and conditions which the Customer supplies or purports to apply).

2.2 The Confirmation shall constitute an offer by OSL to provide the Equipment for hire. The Customer shall accept this offer by returning the signed Confirmation by fax or by returning the completed Confirmation email to OSL.

2.3 Where the Customer does not accept, reject or request an amendment to the Confirmation within 4 normal working hours of the Confirmation being sent to the Customer, the Customer shall be deemed to have accepted OSL's offer.

2.4 Each Confirmation accepted by the Customer in accordance with this Clause 2 will create a separate Contract governed by these Terms.

2.5 OSL reserves the right to amend these Terms from time to time and shall notify the Customer of such amendments. The Customer shall be required to accept the new Terms before an Order can be placed and a new Contract formed.

3. Hire of the Equipment and Sale of Consumables

3.1 In consideration of the payment by the Customer of the Hire Charge, OSL agrees to hire the Equipment to the Customer for the Hire Period subject to these Terms.

3.2 In consideration of the payment by the Customer of the Price, OSL agrees to supply and sell to the Customer the Consumables set out in the Confirmation subject to these Terms.

4. Payment of the Hire Charge and the Price

4.1 OSL may invoice the Customer for the Hire Charge and the Price before, on or immediately following delivery of the Equipment and the Consumables to the Customer. Time shall be of the essence in respect of the Customer's payment.

4.2 Unless otherwise stated in the Confirmation, the Customer shall pay the Hire Charge and the Price within 30 days of OSL's invoice.

4.3 All sums due are exclusive of VAT or other applicable sales tax which shall be paid by the Customer at the appropriate rate.

4.4 Where the Customer fails to make payment within 10 days from the due date then, without prejudice to any other right or remedy available to OSL, OSL shall be entitled to cancel the Contract and/or suspend any delivery of the Equipment and Consumables or where the Equipment and Consumables have already been delivered enter the Delivery Address and remove the same until the outstanding amount has been received and the Customer hereby grants to OSL an irrevocable licence to enter such premises for this purpose. OSL may also charge the Customer interest (both before and after any judgement is made) on the amount unpaid at the rate of 4% above Svenska Handelsbanken's base rate in force from time to time until full payment is made.

4.5 The Customer shall make all payments due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

5. Delivery

5.1 OSL shall use all reasonable endeavours to deliver the Equipment and the Consumables to the Customer at the Delivery Address on or before the Delivery Date. For the avoidance of doubt the time for delivery shall not be of the essence and OSL shall have no liability to the Customer if it fails to meet any Delivery Date.

6. Customer's Obligations

6.1 During the Hire Period, the Customer shall:

(a) keep the Equipment fully insured against all risks of loss and damage, to the full replacement value of the Equipment as new, from the time that delivery is effected or tendered until the Equipment is returned to OSL and the Customer shall procure that the interest of OSL is noted by the insurance company and on the insurance policy and provide forthwith to OSL at OSL's reasonable request, a copy of the certificate of such insurance;

(b) ensure that the Equipment is used in a proper manner by competent trained persons only or by persons under their immediate supervision;

(c) keep and operate the Equipment in a proper and prudent manner;

(d) ensure that the external surfaces of the Equipment are kept clean and in a good condition;

(e) not itself, nor permit its employees, agents, sub-contractors or servants to take the Equipment outside of the United Kingdom without the prior written consent of OSL. Such consent shall not be unreasonably withheld subject always to the Customer arranging and paying for the insurance of the Equipment to the full replacement value for such time as the Equipment is overseas;

(f) not interfere or permit interference with the Equipment or any part thereof nor alter, erase, deface or overprint any trade mark or any other notice of proprietary rights placed on the Equipment;

(g) store or otherwise keep the Equipment in such a way as clearly to indicate at all times that the Equipment is owned by OSL and shall not remove, obscure or delete any mark placed on the Equipment by OSL which may enable the Equipment to be so identified; and

(h) not attempt to repair the Equipment nor permit any person other than OSL's authorised representatives or those approved by OSL to repair the Equipment.

6.2 The Customer shall forthwith upon the occurrence of any loss or damage to the Equipment notify OSL in writing. In the case of damage the Customer shall return the Equipment to OSL and OSL will arrange for the repair of the Equipment or (if lost or if OSL in its absolute discretion considers the Equipment to be beyond economic repair) for its replacement.

6.3 Where the Equipment requires repair or replacement in accordance with Clause 6.2 above:-

(a) the cost of any repair or replacement (whether on loss or damage) shall be the responsibility of the Customer who will forthwith reimburse OSL on an indemnity basis the full cost thereof immediately after notification in writing of such costs; and

(b) until the Equipment (or any replacement) is returned to OSL in good working condition the Customer shall remain liable to pay the Hire Charge in accordance with Clause 4.

7. Title to the Equipment

7.1 The Equipment shall at all times remain the property of OSL.

7.2 The property in the Consumables shall not pass to the Customer until OSL has received in cash or cleared funds payment in full of the Price and the Hire Charge and other goods and/or services agreed to be sold or supplied by OSL to the Customer for which payment is then due.

7.3 The Customer hereby grants an irrevocable licence to OSL, its agents and servants to enter into its premises and collect the Equipment if the Customer is in breach of Clause 6.1 or if OSL has, in any way whatsoever, dealt with or attempted to deal with the Equipment as either legal or equitable owner.

8. Warranties

8.1 Subject to the exception set out in Clause 8.6 below and the limitations upon its liability in Clause 11 below, OSL warrants and undertakes to the Customer that:-

right, power and authority to enter into the Contract;

(b) any services provided by OSL under the Contract shall be supplied and rendered with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice; and

(c) the Equipment and Consumables supplied to the Customer shall be of satisfactory quality, reasonably fit for their purpose and free from defects in design, materials and workmanship. For the avoidance of doubt OSL makes no warranties as to the suitability of the Equipment.

8.2 The Customer warrants and undertakes to OSL that it is, and shall remain throughout the Hire Period free and entitled to enter into the Contract.

8.3 Subject to Clause 8.1, the Customer acknowledges and accepts that OSL gives no other warranties of any kind in relation to the Equipment or Consumables and that any conditions, warranties, terms and undertakings which would otherwise be implied into the Contract (whether by statute or otherwise) relating to the Equipment or Consumables, or the provision of any other goods or services by OSL to the Customer under the Contract are hereby excluded to the fullest extent permitted by law.

8.4 Except as provided below, where any defect appears in Equipment during the Hire Period OSL shall at its election either repair the Equipment and/or supply replacement Equipment as soon as reasonably practicable. For the purposes of this Clause 8, a "defect" means any non-performance with Clause 8.1(c).

8.5 OSL shall not be liable for a breach of the warranty in Clause 8.1(c) unless:-

(a) the Customer gives written notice of a defect to OSL within 14 (fourteen) days of the time when the Customer discovers or ought to have discovered the defect; and

(b) OSL is given a reasonable opportunity after receiving such notice to examine the Equipment and the Customer (if asked to do so by OSL) returns such Equipment to OSL's place of business at the Customer's cost for the examination to take place there.

8.6 OSL shall not be liable for a breach of the warranty in Clause 8.1(c) if a defect arises as a result of:

(a) defects or errors resulting from any modifications of the Equipment made by or any act or omission on the part of the Customer or any person other than a person acting on behalf of OSL;

(b) a failure by the Customer or its sub-contractors, agents, officers or employees to use the Equipment in accordance with good industry practice;

(c) any attempt by any person other than OSL's personnel to adjust, repair or maintain the Equipment;

(d) defects or errors resulting from any fluctuation of electric power, humidity controls or other adverse environmental conditions due to whatever cause;

(e) accident, transportation, neglect, misuse or default of the Customer or its employees, sub-contractors or agents or any third party; or

(f) an event of force majeure, as defined in Clause 11.

8.7 Where any defect in the Equipment is due to the default of the Customer or its sub-contractors, agents, officers or employees under Clause 8.6:-

(a) OSL may charge the Customer for the repair of the Equipment in accordance with its standard scale of charges from time to time, including but not limited to the costs of repair, removal and transportation of the Equipment; and

(b) until the Equipment (or any replacement) is returned to OSL in good working condition the Customer shall remain liable to pay the Hire Charge in accordance with Clause 4.

9. Limitation of Liability

9.1 Nothing in the Contract shall operate to exclude or limit OSL's liability for:

(a) death or personal injury caused by the negligence of OSL, its servants, agents, employees or subcontractors;

(b) any breach or contravention of the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 Supply of Goods and Services Act 1982;

(c) fraudulent misrepresentation; or

(d) any breach of any undertaking as to title, quiet possession and freedom from encumbrance implied by law.

9.2 Subject to Clause 9.1, OSL shall not be liable to the Customer for any loss of, damage to or costs in respect of:

(a) loss of profit, anticipated profits, revenues, anticipated savings;

(b) goodwill or business opportunity;

(c) indirect or consequential loss or damage whether foreseeable, known, foreseen or otherwise.

9.3 OSL's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Hire Charge and the Price.

10. Term and Termination

10.1 Subject to Clause 10.3, the Contract shall commence on the date OSL's Confirmation is accepted by the Customer in accordance with Clause 2 and shall continue in force for the Hire Period.

10.2 Without prejudice to any other remedies available, either party shall be entitled to terminate the Contract with immediate effect by giving written notice of termination to the other if:

(a) the other commits a material breach of the Contract which, in the case of a breach capable of remedy, shall not have been remedied within fourteen (14) days of the receipt by the other of a notice identifying the breach and requiring its remedy; or

(b) the other party shall have a receiver or administrative receiver appointed over it or any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide reconstruction) or if a court of competent jurisdiction shall make an order to that effect or if the other shall enter into any voluntary arrangement with its creditors or shall be subject to an administration order or shall threaten to cease or cease to carry on business.

10.3 Notwithstanding Clause 10.2(a), OSL may terminate the Contract with immediate effect if the Customer fails to pay any sums due by it to OSL within 10 days after the due date.

10.4 Clauses 7, 8 and 9 shall survive termination of the Contract howsoever caused.

10.5 Any termination of the Contract shall be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law.

10.6 At the end of the Hire Period or (if earlier) immediately upon termination of the Contract, the Customer shall, at its own expense, forthwith return to OSL all Equipment supplied to the Customer by OSL under the Contract.

11. Force Majeure

11.1 Neither party shall be liable to the other for any delay in performing or any failure to perform any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying (including, without limitation, any act of God, fire, flood, strike, lock-out or other form of industrial action).

12. Notices

12.1 Any notice or other document to be given under the Contract shall be in writing and delivered by hand or sent by first class pre-paid letter, e-mail or facsimile transmission (to the address or e-mail or facsimile number of the other party set out in the Confirmation (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served and/or delivered if hand-delivered at the time of delivery, if by first class post, 48 hours after posting and if sent by e-mail or facsimile on transmission.

13. Assignment And Sub-Licensing

13.1 OSL shall be entitled to sub-contract, transfer or assign any or all of its rights and/or obligations under the Contract without restriction.

13.2 The benefits and obligations conferred by the Contract upon the Customer are personal to the Customer and shall not be capable of being assigned, delegated, transferred, sub-contracted or otherwise disposed of and the Customer shall not purport to assign, transfer, sub-contract or dispose of the same.

14. General

14.1 If any provision in the Contract shall in whole or in part be held to be illegal or unenforceable under any enactment or rule of law that provision or part thereof shall to that extent be deemed not to form part of the Contract and the enforceability of the remainder of the Contract or any part thereof shall not be affected.

14.2 The Contract contains the entire understanding of the parties with respect of the subject matter hereof and supersedes all prior agreements. Each party acknowledges that, in entering into the Contract, it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.

14.3 No variations to the Contract or these Terms will be effective unless agreed in writing and signed by a duly authorised representative of each party.

14.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of the Contract, the Contract is not intended to, and does not give any person who is not a party to it any right to enforce any of its provisions.

14.5 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to any Contract promptly through negotiation. If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an alternative dispute resolution procedure as recommended to the parties by CEDR or another recognised mediation provider. The commencement of mediation will not prevent the parties commencing or continuing Court proceedings.

14.6 No failure of either party to exercise, and no delay in exercising, any right or remedy provided under the Contract or by law herein contained shall operate as a waiver of such right or remedy.

14.7 OSL and the Customer are each independent contractors with respect to each other and nothing in the Contract shall create any association, partnership or joint venture relationship between them.

14.8 The Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English

The following Terms of On Sight Limited ("OSL") form the basis of the Contract between OSL and the Customer. Where there is any inconsistency between the provisions hereof and the Confirmation (defined below), the provisions of the Confirmation will apply.

Interpretation

- 1.1 In these Terms, unless the context otherwise requires, the following expressions have the following meanings:-
 - "**Confidential Information**" the terms of the Contract and all information obtained by one party from the other pursuant to the Contract which is marked as confidential, or ought reasonably to be regarded as confidential.
 - "**Confirmation**" the email letter sent by OSL to the Customer confirming the details of the Order (including any amendments to the Confirmation agreed by both parties).
 - "**Contract**" each individual offer by OSL accepted by the Customer in accordance with Clause 2 incorporating these Terms
 - "**Customer**" the person who, in the course of their business, has agreed to purchase the Media Products from OSL.
 - "**Customer's Materials**" all films, master disks, information, data, media, software, text, visual images, pictures and other materials supplied by the Customer for use in or to form part of the Media Product(s).
 - "**Delivery Date**" the date set out in the Confirmation or such other date agreed in writing by the parties.
 - "**Delivery Address**" the address for delivery set out in the Confirmation or such other address agreed in writing by the parties.
 - "**Intellectual Property**" all patents, registered or unregistered trade marks, trade and business names, logos and devices, registered or unregistered designs, registered or unregistered copyrights, database rights and moral rights, rights in computer software, domain names, rights in confidential information, applications for any of the above and the right to apply for them in any part of the world and any other intellectual property rights (whether now subsisting or in the future created) both in the UK and all other countries for the full term of those rights (including any extensions or renewals).
 - "**Job Description**" the scope of the Services to be provided by OSL under the Contract.
 - "**Media Products**" those physical or electronic items produced as a result of OSL performing the Services including without limitation videotapes, audiotapes, CDs and DVDs and including any instalment of the Media Products.
 - "**Order**" the order placed by the Customer (by telephone or otherwise) for the purchase of the Media Products.
 - "**OSL**" On Sight Limited (company number 2410150) whose registered office is at 14-15 Berners Street, London W1T 3LJ.
 - "**Price**" the price charged by OSL to the Customer for the Media Product(s) and handling the Customer's Materials as set out in the Confirmation.
 - "**Services**" the services to be provided by OSL under the Contract including, without limitation, dubbing, copying, editing, mixing, mastering, translating, voicing over, formatting or other services in relation to the Customer's Materials as described in the Confirmation.
 - "**Use**" to copy, adapt, publish or otherwise exploit, where applicable, the Customer's Materials and/or the Media Product(s).
- 1.2 The headings in these Terms are for ease of reference only and shall not affect the construction or interpretation of the Contract.
- 1.3 Words importing the singular include the plural and vice versa and words importing any gender include every gender.
- 1.4 Any reference to "person" shall include any partnership, firm, company, body corporate, corporation or organisation.
- 1.5 Any reference to "writing" or "in writing" includes emails and facsimiles.

Application of Terms

- 2.1 These Terms and Clauses 2.5 and 17.3 these Terms shall apply to all Orders and Contracts to the exclusion of all other terms and conditions (including any terms and conditions which the Customer supplies or purports to apply).
- 2.2 The Confirmation shall constitute an offer by OSL to sell the Media Products. The Customer shall accept this offer by returning the signed Confirmation by fax or by returning the completed Confirmation email to OSL.
- 2.3 Where the Customer does not accept, reject or request an amendment to the Confirmation within 4 normal working hours of the Confirmation being sent to the Customer the Customer shall be deemed to have accepted OSL's offer.
- 2.4 Each Confirmation accepted by the Customer in accordance with this Clause 2 will create a separate Contract governed by these Terms.
- 2.5 OSL reserves the right to amend these Terms from time to time and shall notify the Customer of such amendments. The Customer shall be required to accept the new Terms before an Order can be placed and a new Contract formed.

Basis of Sale

- 3.1 In consideration of the payment by the Customer of the Price and the provision of the Customer's Materials to OSL, OSL agrees to sell the Media Products and provide the Services to the Customer in accordance with these Terms.
4. **Price and Payment**
 - 4.1 OSL may invoice the Customer for the Price before, on or immediately following delivery of the Media Products to the Customer. Time shall be of the essence in respect of the Customer's payment.
 - 4.2 Unless otherwise stated in the Confirmation, the Customer shall pay the Price within 30 days of OSL's invoice.
 - 4.3 All sums due are exclusive of VAT or other applicable sales tax which shall be paid by the Customer at the appropriate rate.
 - 4.4 Where the Customer fails to make payment within 10 days from the due date then, without prejudice to any other right or remedy available to OSL, OSL shall be entitled to cancel the Contract and/or suspend any delivery of the Media Products or provision of the Services. OSL may also charge the Customer interest (both before and after any judgement is made) on the amount unpaid at the rate of 4% above Svenska Handelsbanken's base rate in force from time to time until full payment is made.
 - 4.5 The Customer shall make all payments due without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

Delivery

- 5.1 OSL shall use all reasonable endeavours to deliver the Media Products to the Customer at the Delivery Address on or before the Delivery Date. For the avoidance of doubt the time for delivery shall not be of the essence and OSL shall have no liability to the Customer if it fails to meet any Delivery Date.
- 5.2 If the Media Product(s) are to be delivered in instalments, the Contract will be treated as a single Contract and not severable.
- 5.3 The quantity of any consignment of Media Product(s) as recorded by OSL upon despatch from OSL's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.4 OSL shall not be liable for any non-delivery of Media Product(s) or non-performance of the Services (even if caused by OSL's negligence) unless notice in writing is given to OSL within 7 (seven) days of the date when the Media Product(s) would in the ordinary course of events have been received or the Services performed.
- 5.5 Any liability of OSL for non-delivery of the Media Product(s) shall be limited to replacing the Media Product(s) within a reasonable time or issuing a credit note for the Price at OSL's discretion.

Media Products and Services

- 6.1 The quantity, quality and description of the Media Product(s) and the Services shall, where required, be detailed in the Confirmation.
- 6.2 OSL shall not be liable for any failure to provide or delay in providing the Media Product(s) and the Services to the extent that such delay arises out of or in connection with any act or omission of the Customer or its sub-contractors, agents, officers or employees which either directly or indirectly affects OSL's ability to provide the Media Product(s) and the Services including any breach of the Customer of its obligations under the Contract. OSL reserves the right to invoice the Customer for any additional costs incurred by OSL as a result of such failure or delay.
- 6.3 During the course of supplying the Media Product(s) and performing the Services, OSL reserves the right to make any improvement, substitution or modification to the Job Description as it reasonably deems fit provided that such improvement, substitution or modification will not materially change the nature of the Media Product(s) and/or the performance of the Services.
- 6.4 OSL reserves the right to refuse to provide the Media Product(s) and/or the Services where, in its reasonable opinion, the content of the Customer's Materials and/or the Order and/or the Job Description are or are likely to be construed in OSL's reasonable opinion as being illegal, obscene, blasphemous, threatening, defamatory, discriminatory, promoting illegal or unlawful activity or are otherwise in violation of any rules, regulations or laws to which the Customer's Materials, Media Product(s) and/or the Services are subject.

Risk and Property

- 7.1 The Customer acknowledges that OSL shall not be responsible for any loss of Customer's Materials supplied by the Customer and that the Customer must retain in its possession at least 1 (one) copy of the Customer's Materials supplied to OSL pursuant to the Contract.
- 7.2 OSL shall at its sole discretion on the request of the Customer retain and store copies of the Customer's Materials and the Media Product(s) at its premises.
- 7.3 OSL and the Customer acknowledge that OSL shall at all times hold the Customer's Materials as the Customer's fiduciary agent and bailee.
- 7.4 Risk of damage to or loss of the Customer's Materials shall not pass to OSL although OSL shall take reasonable care and precautions in order to ensure that the Customer's Materials are:-
 - (a) stored in a safe and secure environment;
 - (b) insured against loss, theft, fire, damage or other kind of destruction howsoever caused whilst retained and stored on OSL's premises to a maximum value of the cost of providing replacement Customer's Materials; and
 - (c) at all times kept within the control of OSL.
- 7.5 If requested OSL shall, in accordance with the written instructions of the Customer, return all the Customer's Materials at the cost of the Customer to the Delivery Address and certify that all duplicates of the Customer's Materials have been destroyed.
- 7.6 Risk of damage to or loss of the Media Product(s) shall pass to the Customer upon delivery of the Media Product(s) to the Customer in accordance with the Contract.
- 7.7 Notwithstanding the passing of risk in the Media Product(s) or any other terms of the Contract, the property in the Media Product(s) shall not pass to the Customer until OSL has received in cash or cleared funds payment in full of the Price of the Media Product(s) and all other Media Product(s) and/or Services agreed to be sold or supplied by OSL to the Customer for which payment is then due.
- 7.8 Until such time as the property in the Media Product(s) passes to the Customer, the Customer shall hold the Media Product(s) as OSL's fiduciary agent and bailee and shall keep the Media Product(s) separate from those of the Customer and third parties and properly stored, protected and insured and identified as OSL's property.
- 7.9 Until such time as the property in the Media Product(s) passes to the customer (and provided the Media Product(s) are still in existence and have not been resold) OSL shall be entitled at any time to require the Customer to deliver up the Media Product(s) to OSL and, if the Customer fails to do so forthwith upon demand, the Customer grants OSL a licence to enter upon any premises of the Customer or any third party where the Media Product(s) are stored to repossess the Media Product(s).
- 7.10 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Media Product(s) which remain the property of OSL, but if the Customer does so, all monies owing by the Customer to OSL shall (without prejudice to any other right or remedy of OSL) forthwith become due and payable.

Intellectual Property Rights

- 8.1 OSL acknowledges that any and all of the Intellectual Property used or embodied in or in connection with the Customer's Materials shall remain the sole property of the Customer or of such other party as may be identified therein or thereon (the "Owner") and subject to a breach of the Customer's warranties set out in Clause 11.2. OSL shall not during or at any time after the completion, expiry or termination of the Contract in any way question or dispute the ownership by the Customer or the Owner of any such Intellectual Property.
- 8.2 Customer hereby grants a non-exclusive and non-transferable licence to OSL to Use the Intellectual Property subsisting in the Customer's Materials in order to perform the Services and provide the Media Product(s).
- 8.3 When OSL has received cash or cleared funds for payment of the Price by the Customer, OSL acknowledges that the Intellectual Property in and to the Media Product(s) and/or any Intellectual Property relating to them and all modifications and amendments thereto shall be the property of the Customer and shall remain the Customer's property.
- 8.4 Until payment of the Price, the Customer and/or its nominees shall be entitled to a revocable, non-exclusive, non-transferable licence to Use the Intellectual Property created by OSL relating to the Media Product(s) supplied under the Contract.

knowledge and know-how gained and/or arising from supplying the Media Product(s) and/or performing the Services in the provision of similar products and/or services to other OSL clients and/or potential clients and the Customer shall place no restriction whatsoever on such right. The Customer permits OSL to promote and advertise itself through the use of examples of the Media Product(s) in promotional or other materials.

Warranties and Liability

- 9.1 Subject to Clauses 9.2 and 9.3, the Customer acknowledges and accepts that OSL gives no warranties of any kind in relation to the Media Product(s) and/or the Services and that any warranties, conditions and other terms implied by statute or common law (except for the conditions implied by Section 12 of the Sale of Goods Act 1979 and/or Section 2 of the Supply of Goods and Services Act 1982, as amended) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2 Subject to Clauses 9.5 and 9.6 and the limitations on OSL's liability in Clause 10, OSL warrants and undertakes to the Customer that the Media Product(s) excluding hardware will:-
 - (a) be of satisfactory quality and fit for any particular purpose for which the Media Product(s) are being supplied if the Customer has made known such purpose to OSL in writing and OSL has confirmed in writing that it is reasonable for the Customer to use the Media Product(s) for such a purpose;
 - (b) for a period of 3 months from the Delivery Date, be free from material defects in design, material and workmanship;
 - (c) materially correspond with any relevant description in any Job Description agreed by OSL insofar as this is within OSL's control; and
 - (d) comply with all statutory requirements and regulations relevant to the Media Product(s).
- 9.3 Subject to Clause 9.5 and 9.6 and the limitations on OSL's liability in Clause 10, OSL warrants and undertakes to the Customer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and in accordance with good industry practice.
- 9.4 If any Media Product(s) and/or Services are not supplied or performed in accordance with Clauses 9.2 and 9.3, OSL shall, subject to Clauses 9.5 and 9.6 and at its election, either repair the Media Product(s) and/or supply replacement Media Product(s) and/or Services (including reasonable costs) charges and expenses of whatever nature arising out of or in connection with the repair or replacement of the Media Product(s) and/or Services.
- 9.5 OSL shall not be liable for a breach of any of the warranties in Clauses 9.2 and 9.3 unless:-
 - (a) the Customer gives written notice of a defect to OSL within 14 (fourteen) days of the time when the Customer discovers or ought to have discovered the defect; and
 - (b) OSL is given a reasonable opportunity after receiving such notice to examine the Media Product(s) and the Customer (if asked to do so by OSL) returns such Media Product(s) to OSL's place of business at the Customer's cost for the examination to take place there.
- 9.6 OSL shall not be liable for a breach of any of the warranties in Clauses 9.2 and 9.3 if a defect arises as a result of:-
 - (a) any modifications of the Media Product(s) made by or, any act or omission on the part of the Customer or its sub-contractors, agents, officers or employees or any person other than a person acting on behalf of OSL;
 - (b) a failure by the Customer or its sub-contractors, agents, officers or employees to use the Media Product(s) in accordance with good industry practice;
 - (c) accident, transportation, neglect or misuse of the Customer or its sub-contractors, agents, officers or employees; or
 - (d) an event of force majeure, as defined in Clause 13.
- 9.7 Where any defect in the Media Product(s) is due to the default of the Customer or its sub-contractors, agents, officers or employees under Clause 9.6, OSL may charge the Customer for the repair of the Media Product(s) in accordance with its standard scale of charges from time to time, including but not limited to the costs of repair, removal and transportation of the Media Product(s).
10. **Limitation of Liability**
 - 10.1 Nothing in the Contract shall operate to exclude or limit OSL's liability for:-
 - (a) death or personal injury caused by the negligence of OSL, its servants, agents, employees or sub-contractors; or
 - (b) any breach or contravention of the conditions implied by Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982, as amended; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any undertaking as to title, quiet possession and freedom from encumbrance implied by law.
 - 10.2 Subject to Clause 10.1:-
 - (a) OSL's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price; and
 - (b) OSL shall not be liable to the Customer for any special, indirect or consequential loss or damage for loss of profit, loss of business, loss of anticipated savings, depletion of goodwill or loss of management time which arise out of or in connection with the Contract.
 - 10.3 OSL's maximum liability for physical damage to the Customer's Materials resulting from OSL's negligence shall be limited to the cost of providing replacement Customer's Materials.
11. **Customer's Warranties, Undertakings and Indemnities**
 - 11.1 The Customer warrants that OSL does not operate or exercise final editorial control over, and accepts no responsibility for the content of the Customer's Materials provided to OSL by the Customer and as incorporated into the Media Product(s).
 - 11.2 The Customer warrants that:-
 - (a) it has obtained and will obtain all necessary consents, approvals and licences for the Use of the Customer's Materials by OSL to provide the Services and supply the Media Product(s) in accordance with the Job Specification; and
 - (b) the Use of the Customer's Materials by OSL to provide the Services and supply the Media Product(s) in accordance with the Job Specification will not infringe any third party's Intellectual Property.
 - 11.3 In the event of an allegation(s) of a breach of Clause 11.2, or if OSL reasonably suspects such a breach or infringement has occurred, OSL may, without giving notice to the Customer and without liability, suspend availability of the Media Product(s) and/or the Services pending clarification of such allegation(s) or suspicion.
 - 11.4 The parties shall notify each other as soon as is reasonably possible after becoming aware of any third party allegation(s) of a breach of Clause 11.2.
 - 11.5 The Customer shall indemnify OSL, and its officers, agents, employees or otherwise against any claims, proceedings, losses or damages (including reasonable costs) charges and expenses of whatever nature arising out of or in connection with any claim or action made against OSL and its sub-contractors, officers, agents, employees or otherwise relating to a breach of Clause 11.2.
12. **Term and Termination**
 - 12.1 Without prejudice to any other remedies available, either party shall be entitled to terminate the Contract with immediate effect by giving written notice of termination to the other if:-
 - (a) the other commits a material breach of the Contract which, in the case of a breach capable of remedy, shall not have been remedied within fourteen (14) days of the receipt by the other of a notice identifying the breach and requiring its remedy; or
 - (b) the other party shall have a receiver or administrative receiver appointed over it or any part of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide reconstruction) or if a court of competent jurisdiction shall make an order to that effect or if the other shall enter into any voluntary arrangement with its creditors or shall be subject to an administration order or shall threaten to cease or cease to carry on business.
 - 12.2 Without prejudice to any other remedies available, OSL may terminate the Contract with immediate effect if:-
 - (a) notwithstanding Clause 12.1(a) the Customer fails to pay any sums due by it to OSL within 10 days after the due date; and
 - (b) the Customer infringes the Intellectual Property of OSL or any third party.
 - 12.3 Clauses 7, 10 and 14 shall survive termination of the Contract howsoever caused.
 - 12.4 Any termination of the Contract shall be without prejudice to any other rights or remedies either party may be entitled to hereunder or at law.
13. **Force Majeure**
 - 13.1 Neither party shall be liable to the other for any delay in performing or any failure to perform any of its obligations hereunder if such delay is caused by circumstances beyond the reasonable control of the party so delaying (including, without limitation, any act of God, fire, flood, strike, lock-out or other form of industrial action).
14. **Confidentiality**
 - 14.1 Each party shall keep confidential any and all Confidential Information. Each party shall not use the Confidential Information for any purpose other than to perform its obligations under the Contract. Each party shall ensure that its sub-contractors, agents, officers and employees comply with the provisions of this Clause 14.
 - 14.2 The obligations on the parties set out in Clause 14.1 shall not apply to any information which:-
 - (a) is publicly available or becomes publicly available through no act or omission or the disclosing party; or
 - (b) is required to be disclosed by law or by order of a court of competent jurisdiction.
15. **Notices**
 - 15.1 Any notice or other document to be given under the Contract shall be in writing and delivered by hand or sent by first class pre-paid letter, e-mail or facsimile transmission (to the address or e-mail or facsimile number of the other party set out in the Confirmation (or such other address or number as may have been notified) and any such notice or other document shall be deemed to have been served and/or delivered if hand-delivered, at the time of delivery, if by first class post, 48 hours after posting and if sent by e-mail or facsimile on transmission.
16. **Assignment and Sub-Licensing**
 - 16.1 OSL shall be entitled to sub-contract, transfer or assign any or all of its rights and/or obligations under the Contract without restriction.
 - 16.2 The benefits and obligations conferred by the Contract upon the Customer are personal to the Customer and shall not be capable of being assigned, delegated, transferred, sub-contracted or otherwise disposed of and the Customer shall not purport to assign, transfer, sub-contract or dispose of the same.
17. **General**
 - 17.1 If any provision in the Contract shall in whole or in part be held to be illegal or unenforceable under any enactment or rule of law that provision or part thereof shall to that extent be deemed not to form part of the Contract and the enforceability of the remainder of the Contract or any part thereof shall not be affected.
 - 17.2 The Contract contains the entire understanding of the parties with respect of the subject matter hereof and supersedes all prior agreements. Each party acknowledges that, in entering into the Contract, it has not relied on and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract.
 - 17.3 No variations to the Contract or these Terms will be effective unless agreed in writing and signed by a duly authorised representative of each party.
 - 17.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999 and notwithstanding any other provision of the Contract, the Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.
 - 17.5 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to any Contract promptly through negotiation. If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an alternative dispute resolution procedure as recommended to the parties by CEDR or another recognised mediation provider. The commencement of mediation will not prevent the parties commencing Court proceedings.
 - 17.6 No failure of either party to exercise, and no delay in exercising, any right or remedy provided under the Contract or by law shall operate as a waiver of such right or remedy.
 - 17.7 OSL and the Customer are each independent contractors with respect to each other and nothing in the Contract shall create any association, partnership or joint venture relationship between them.
 - 17.8 The Contract shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts.